CONNECTICUT TRIAL LAWYERS ASSOCIATION

150 Trumbull Street, 2nd Floor
Hartford, CT 06103
p) 860.522.4345 f) 860.522.1027
www.cttriallawyers.org

Raised Bill 6393
Public Hearing: 3-15-13

TO: **MEMBERS OF THE COMMITTEE ON PUBLIC HEALTH**
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 15, 2013

RE: **OPPOSITION TO RAISED BILL 6393 – AN ACT CONCERNING THE PROFESSIONAL STANDARD OF CARE FOR EMERGENCY MEDICAL CARE PROVIDERS**

The Connecticut Trial Lawyers Association opposes Raised Bill # 6393, "An Act Concerning the Professional Standard of Care for Emergency Medical Care Providers". This legislation would change the burden of proof for medical malpractice claims involving treatment to patients in hospital emergency departments, effectively providing special protections to emergency room doctors; and penalizing victims of negligent care in emergency rooms.

The law in Connecticut currently requires any person who wants to file a medical malpractice lawsuit to first overcome the procedural and financial obstacles already imposed by this legislature, including filing a good faith certificate. At trial, the plaintiff has the burden of convincing the jury, by a preponderance of the evidence, that the health care provider was negligent and that the health care provider caused harm as a result of that negligence. Trial lawyers and the victims of medical malpractice are already aware of the enormous challenges posed by these cases. Now, the providers of care in emergency rooms are seeking to impose higher hurdles and greater challenges by elevating the burden of proof from "preponderance" to "clear and convincing evidence", a burden required for very few types of claims, including termination of parental rights and fraud. [1]

The question this committee should ask is whether this higher burden is necessary to accomplish any rational reasonable goal. Are there floods of lawsuits against emergency room doctors? Would such a burden on victims improve patient safety? Would it decrease the occurrence of malpractice in the emergency room? Would it decrease the costs of care? The answers to all of those questions are clearly NO.

The doctors, hospitals and medical societies are asking you to believe that a crisis exists with malpractice claims in Connecticut. In fact, malpractice claims have gone down since the

[1] According to the Judicial Branch Website's Civil Jury Instructions, "clear and convincing" is a more exacting standard, and means "evidence that is substantial and that unequivocally establishes the elements of [a cause of action]."

legislature enacted reforms in 2005. In the last fiscal year, there were 261 malpractice cases filed. There are 31 hospitals in the State of Connecticut. According to the Connecticut College of Emergency Physician's testimony to this committee last year, those hospitals see about 4000 patients in their emergency departments every single day. According to the testimony of the Connecticut Hospital Association to this committee last year, Connecticut hospitals treat nearly 1.6 million people in their emergency rooms each year. 31 hospitals, 4000 patients every day, 1.6 million patients every year. What is the number of claims from emergency department care? A study of closed claims from Florida and Missouri showed about 10% of closed malpractice claims involved emergency room care. If that statistic were generally true for Connecticut, we would have less than ***.0016%*** of all visits to an ER resulting in a medical malpractice claims. So there is no crisis.

But the more important question should be whether these reforms would improve the quality of care. Again, the answer is no, and it comes from the Emergency Room Physicians themselves. The American College of Emergency Care Physicians did a study titled "The National Report Card on the State of Emergency Medicine." It was published in 2006. They ranked states based on 4 broad categories: Access to care, Quality and Patient Safety, Public Health and Injury Prevention, and Medical Liability Environment. The study established an inverse relationship between medical liability protections and quality of care. For example, **Connecticut** gets an A- for Access to Care; an A+ for Quality and Patient Safety but an F from the College of Emergency Physicians for Medical Liability Environment. The study points out that Connecticut doesn't have caps, and doesn't have protection for emergency room physicians, the two top criteria for our F in Liability Environment. Compare Connecticut to the top 4 states ranked by the College of Emergency Physicians for their liability environments. Remember, we got A's for Access and Quality. **Texas**, which is often held up by the Medical community as a model for Medical Liability reforms, gets D+ for Access and D+ for Quality and Patient Safety, but an A for its Medical Liability Environment. **California**, which gets an A+ for its restrictive medical liability environment, only gets a C and C+ for Access to Care and Quality and Patient Safety. **Montana** gets an A for its Medical Liability environment, a D- for Quality and Patient Safety and an F for Public Health and Injury Prevention. **Nevada**: A- for liability protections, D+ for Access, and F for Quality.

The evidence shows that there is no problem relating to claims involving emergency room care. In light of the evidence that liability reforms such as these not only hurt victims, but decrease the quality of care, this committee should not support this Bill.

WE URGE THE COMMITTEE TO VOTE NO ON RB 6393